HOUSING DEPARTMENT

The 20th January, 1969

No. 3353-IHG-(277)-68/2281.—In exercise of the powers conferred by section 24 of the Punjab Industrial Housing Act, 1956, the Governor of Haryana hereby makes the following rules further to amend the Punjab Industrial Housing Rules, 1956, namely :—

1. These rules may be called the Punjab Industrial Housing (Haryana First Amendment) Rules, 1969.

2. In the Punjab Industrial Housing Rules, 1956, in rule 7 and Forms 'B' and 'C' for the word "Punjab" wherever occurring, the word "Haryana" shall be substituted

No. 3353-IHG-(277)68/2283.—In exercise of the power conferred by section 40 of the Punjab Slum Areas (Improvement and Clearance) Act, 1961, and all other powers enabling him in this behalf, the Governor of Haryana hereby makes the following rules further to amend the Punjab Slum Areas (Improvement and Clearance) Rules, 1962, namely:—

1. These rules may be called the Punjab Slum Areas (Improvement and Clearance) Haryana First Amendment Rules, 1969.
2. In the Punjab Slum Areas (Improvement and Clearance) Rules, 1962, in form "C" as mentioned in rule 3, for the word 'Punjab" wherever occurring, the word "Haryana" shall be substituted.

B. L. AHUJA, Secy.

LABOUR DEPARTMENT

The 10th January, 1969

No. 237-ASO-III-Lab-69/981.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of Zila Parishad, Gurgaon.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

REFERENCE No. 18 OF 1967.

between

THE WORKMEN AND MANAGEMENT OF M/S. ZILA PARISHAD, GURGAON.

Present—

Shri C.G. Kaushik for the workmen.
Shri R.C. Sharma, for the management.

AWARD

Sarvshri Bed Ram, Mam Chand, Siri Kishan, Omi, Har Lal, Rama, Kartar Singh, Ratti Ram, Muni Lal, Balbir, Jai Singh, Ram Lal, Chuni Lal, Bhura, Mazid Khan Punni, Shiv Lal, Rehman Khan, Hari Singh, Nannu, Tota Ram, Umrao, Dharam Singh, Lekh Ram, Caphur, Tej Singh, Mannu, Rup Lal, Pyara Lal and Ramji Lal were in the service of M/s Zila Parishad, Gurgaon as Beldar and Mates etc., for the maintenance of road which have been taken over by the P.W.D. Consequently their services were terminated with effect from 6th November, 1966. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. 109-SF-3-Lab-67/4643, dated 7th March, 1967:—

> Whether the termination of services of the workmen shown in the enclosed list is justified and in order ? If not, to what relief are they entitled ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri Hans Raj Gupta in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. Shri Gupta framed the issues which arose from the pleadings of the parties but before he could record the evidence he was transferred. The evidence was recorded by me. After the conclusion of the evidence an application was given on behalf of the management for permission to produce additional evidence and in the meantime the High Court was pleased to hold in Civil Writ Petition No. 1575 of 1966 in the case of M/s Haryana Co-operative Transport Ltd., Kaithal, *versus* the State of Punjab and others that the appointment of my learned predecessor Shri Hans Raj Gupta as Presiding Officer of this Court was not validly made because he did not possess the necessary qualifications as laid down in sub-section (3) of section 7 of the Indusatrial Disputes Act. In view of the findings of their Lordship in the aforesaid Civil Writ Petition it was held—, *vide* order of this Court, dated 10th July, 1968 that the proceedings conducted by my learned predecessor could not be held to be valid. The parties were, therefore, given a fresh opportunity to file their statement of claim and written statement. A fresh statement of claim was filed on behalf of the workmen and the management filed their written statement. The pleadings of the parties gave rise to the following issues :—

1. Whether the activities of repairing the roads is not an industry as defined under the Industrial Disputes Act, 1947 ?

2. Whether the reference is not valid for the reasons mentioned in the preliminary objections ?

3. Whether the reference is pre-mature and is in contravention of provisions of Zila Parishad Act ?

4. Whether the reference has lapsed for the reasons mentioned in para No. 7 of the written statement ?

5. Wherher the present Presiding Officer is not competent to act and whether this objection can be raised in this Court ?

6. Whether this Court has no jurisdiction because it cannot go into the question of validity of the retrenchment ?

7. Whether the claimant are not workmen or servant as defined in rules and regulations made by the Zila Parishad and, if so, what is its effect ?

8. Whether the applicants were employed on job contract and temporary capacity. If so, what is its effect ?

9. Whether the services of the claimant could be terminated according to the contract of service at any time as they were work charge labour ?

10. Whether the termination of the services of Sarvshri Bed Ram, Mam Chand, Siri Kishan, Omi, Har Lal, Rama, Kartar Singh, Ratti Ram, Muni Lal, Balbir, Jai Singh, Ram Lal, Chuni Lal, Bhura, Mazid Khan, Puni, Shiv Lal, Rehman Khan, Hari Singh, Nannu, Tota Ram, Umrao, Dharam Singh, Lekh Ram, Caphur , Tej Singh, Mannu, Rup Lal, Pyara Lal, Ramji Lal, is justified and in order ? If not, to what relief they are entitiled ?

The parties were given an opportunity to produce their evidence afresh. ShriR.C. Sharma, who reprensent the management stated that he did not wish to produce any further evidence and the evidence of the witnesses already examined may be read in support of the issues framed by this Court on 29th July, 1968. Shri Sharma, however, further examined Shri Suraj Mal Secretary to the respondent Board. Shri C. B. Kaushik who represent the wrokmen also stated that he did not wish that any of the witnesses already examined on behalf of the management be recalled for further cross-examination . He also did not produce any further evidence on behalf of the workmen and prayed that the evidence of the witnesses already recorded may be read in evidence and Shri Sharma on behalf of the management stated that he did not wish that any of the witnesses of the workmen already examined be recalled for further cross examination in the the light of the issues framed on 29th July, 1968. I have heard the arguments of the learned representatives of the parties and have gone through the records. My findings are as under : -

Issue No. 1.—It is submitted on behalf of the Zila Parishad that it is not carrying on any business, trade or manufacture or activities analogous to tarde or business. It is submitted that Zila Praishad is a creation of statute and its activities are specifically mentioned in the statute and it is under no obligation to construct or repair any road and the activity of repairing the road is also not an industry as defined in the Industrial Disputes Act. The learned representative of the management relied upon the latest pronouncement of their Lordships of the Supreme Court in the case Madras Gymkhana Club Employees Union *versus* the management of Gymkhana Club reported in 1967-II-LLJ-720 in which the expression "Industry" has been exhaustively discussed. It was submitted that in view of the latest decision of the Supreme Court only the activities which would fall within the definition of a business, trade, undertaking or manufacture carried on for profit would fall within the definition of the expression "industry" and no activities of the Municipal Committees, Zila Parishad or Hospitals etc. would be an industry.

I have carefully considered the submissions of the learned representative of the management and in my opinion in the authoritiy cited as 1967-II-LLJ/720 their Lordships of the Supreme Court have only been pleased to hold that the activities of a club would not fall within the expression "Trade", Business, manufacture or calling used in the first part of the definition of the industry. It would not be correct to say that in view of the Supreme Court decision no activities for the Municipal Committees, Zila Parishad or Hospitals etc., can now be held to be an industry. The activities of the Hospitals have been held to be industry in the authority cited as State of Bombay *versus* Hospital Mazdoor Sabha 1960-I-LLJ, 251 (Supreme Court) and this authority has not been over ruled although his Lordship Mr. Justice (now Chief Justice) Hidayat Ullah has been pleased to observe that the Hospital Mazdoor Sabha case is on the verge and there are reasons to think that it took a extreme view of the industry. Moreover clause (n) of Section 2 of the Industrial Disputes Act defines the public utility services and it means *inter alia* Railway services, Postal, Telegraphs or Telephone services, any industry which supplies power, light or water to the public any system of public conservancy or sanitation or any industry specified in the first schedule which may be delcared to be public utility services by the appropriate Government and amongst other industries services in the hospitals and dispenseries and Fire Brigade services can be declared to be public utility services. All these services must therefore be held to be industry because section 12 of the Industrial Disputes Act provides that where any industrial dispute exists or is apprehended with regard to public utility services the Conciliation Officer is bound to hold conciliation proceedings in the prescribed manner and if no settlement is arrived at before him the appropriate Government if satisfied can refer the dispute to a Board, Labour Court, tribunal or National Tribunal for adjudication. The construction and maintenance of road also renders material services to the public at large and in my opinion this activity would fall within the definition of an industry. I find this issue in favour of th e workmen.

Issue No. 2.—The reference is said to be invalid for the following reasons :—(1) There is no provision in the Industrial Disputes Act that the said Act is applicable to institutions like Zila Parishad. It is submitted that Zila Parishad is a specific kind of establishment and the authorities created under the Industrial Disputes Act have no jurisdiction to adjudicate upon any dispute regarding the Zila Parishad. (2) The Zila Parishad is not carriyng on any business, trade or manufacture or activities analogous to trade of business. It is alleged that Zila Parshad is a creation of special statute and can undertake only those activities and acts which are specifically mentioned therein and therefore it is not under any obligations to construct or maintain any road. It is alleged that the claimants

were employed by the Zila Parishad as Gangmen to work on different roads to do the job of repairs etc., and for this purpose the Zila Parishad got two roads from the erstwhile District Boards, one from Palwal to Alalpur which is three miles long and another from Palwal to Utawar which is 13 miles long. (3) The two roads from Palwal to Alalpur and Palwal to Utawar have also been taken over by the P.W.D. about a year back and now only a approach road from Masani to Gurgaon which is one mile long is under the control of Zila Parishad and therefore the work for which the claimants were employed no longer exists and therefore no Industrial Disputes Act continue to exist or can which be adjudicated. (4) The claimants do not fall within the definition of workmen as they are no longer in the employment of Zila Parishad. (5) The reference is vague because it does not indicate as to from which date and in what manner the services of the claimants have been terminated. (6) The claimants are not members of any registered trade union which could raise the dispute on their behalf. The union which is representing them in these proceedings is a unregistered union and therefore the reference is bad in law.

I have carefully considered the submissions of the learned representative of the management in support of the aforesaid preliminary objections and in my opinion there is no substance in them. While discussing issue No. 1, it has been held that the activity of repairing and maintaining roads is an industry and it is admitted on behalf of the Zila Parishad that the duty of maintaining the roads have been taken over by the Zila Parishad from the erstwhile District Board. It is not the submissions of the learned representative of the management that the Zila Parishad could not legally take over this activity and therefore in the eye of law no relationship of employer and employee came into existence between the Zila Parishad and the claimants and for this reason the claimant could not raise any dispute and claim any relief from the Zila Parishad. Since the claimants were admittedly in the service of the Zila Parishad and were employed for the purpose of maintaining the roads, it must be held that the claimants are competent to raise the present dispute in case they are aggrieved by reasons of the termination of their services.

As regards the objections that the claimants do not fall within the definition of the workmen, it appears that the learned representative who is appearing on behalf of the Zila Parishad has not read definition of the "workmen" as given in clause (s) of Section 2 of the Industrial Disputes Act. The expression workman as defined in the said clause not only mean a person who is actually employed in an industry, but for the purpose of any proceedings under the Industrial Disputes Act in relation to an industrial dispute it includes any such person who has been dismissed, discharge or retrench in connection with or as a consequence of that dispute or whose dismissal, discharge, or retrenchment has led to that dispute. Admittedly the present dispute has arisen by reason of the retrenchment of the services of the claimant who were in the service of the Zila Parishad and therefore the claimants would fall within the definition of the workmen.

The reference cannot also be said to be vague because it has not been indicated as to from which date and in what manner the services of the claimants have been terminated. Under section 2A of the Industrial Disputes Act the workman can raise an industrial dispute if he is discharged, dismissed, retrenched or if his services are otherwise terminated. The learned representative of the management has not cited any authority in support of his submission that it is incumbent that in the order of reference itself the Government is bound to mention the manner in which the services of the workmen have been terminated. It is also now not necessary that the case of the workmen whose services have been terminated should be espoused by any union of workmen or a substantial number of his co-workers. Under section 2-A of the Industrial Disputes Act the workmen themselves who are aggrieved by reasons of the termination of their services can raise an industrial dispute. The question as to whether the union whose office bearer is representing the workmen in any proceedings under the Industrial Disputes Act is a registered or not is no longer relevant for the purpose of deciding the validity of the reference. In my opinion therefore there is no force in any of the aforesaid preliminary objections raised on behalf of the Zila Parishad against the validity of the reference. I find this issue in favour of the claimants.

Issue No. 3.- The reference is said to be pre-mature because under the provisions of Zila Parishad Act the claimants have a right of appeal against the orders of Zila Parishad to the authorities specified in the Act and the present reference has been made without first approaching the appellate authority. The services of the claimant stand terminated by Zila Parishad and under section 2A of the Industrial Disputes Act the workmen aggrieved by reason of the termination of the services can immediately raise an industrial dispute and in my opinion the reference can not be said to be pre-mature.

Issue No. 4.- It is alleged that the Government of Haryana by shifting the Headquarters of the Labour Court from Rohtak to Faridabad have abolished the Labour Court at Rohtak and have created a new Court at Faridabad and since there is no notification under section 7 of the Industrial Disputes Act constituting the Labour Court at Faridabad therefore this Court has no jurisdiction to adjudicate upon the industrial dispute referred to the Labour Court, Rohtak. In my opinion there is no force in this submission. The Government of Haryana by Notification No. 5414-3-Lab-68/15254, dated 20th June, 1968 have amended the original notification No. 11495, 12474-C-Lab-57/11245, dated 7th February, 1958 by substituting the word "Faridabad" for the word "Rohtak" in the said notification. This means that by reason of this amendment the Labour Court which was constituted with its headquarters at Rohtak continue to exist with its headquarters at Faridabad after the said amendment. It can not therefore be said that the Labour Court at Rohtak has been abolished and a new Court at Faridabad has been constituted and for this reason the reference which was made to the Labour Court at Rohtak has lapsed. I find this issue also in favour of the applicant.

Issue No. 5.—The allegation that the appointment of the present Presiding Officer at Rohtak was never notified is incorrect. The Government of Haryana *vide* Notification No. 7103-3-Lab-67/25650, dated 24th August, 1967 notified the appointment of the present Presiding Officer after he had assumed the charge. The objection of the learned representative of Zila Parishad is that this notification is only with regard to the assumption of the charge as Presiding Officer, Labour Court, Rohtak and is not of appointment. There is no force in this submission because Rule 5 of the Industrial Disputes (Punjab) Rules, 1958 only requires the appointment of the Labour Court etc. together with the names of the persons constituting it to be notified in the official Gazette. As soon as the present Presiding Officer took over charge the appointment was notified. It cannot therefore be said that the present Presiding Officer is acting without jurisdiction.

It is also doubt ful if this objection can be raised in this Court because if the present Presiding Officer is acting without jurisdiction then any findings given by him will be of no legal value. It will not be out of place

to mention that the objection was raised at a very late stage. The present Presiding Officer took over charge on the afternoon of 17th July, 1967 but the objection regarding the validity of the appointment was not taken uptill almost after the completion of the proceedings.

Issue No. 6.—It is true that under item No. 10 of the 3rd schedule of the Industrial Disputes Act the retrenchment of workmen and closure of establishment is a matter within the jurisdiction of the Industrial Tribunal but under the proviso to sub-section (1) of section 10 of the Industrial Disputes Act the appropriate Government is competent to refer any dispute to the Labour Court under clause (c) even if the dispute relates to any matter specified in the 3rd schedule if it is not likely fact more than 100 workmen. Admittedly only 30 persons are affected by the present dispute and therefore it can not be said that the present reference is invalid.

Issue Nos. 7, 8 and 9.—It is submitted that the applicants were employed on job contract and in temporary capacity and they were not workmen or servant as defined in Rules and regulations made by the Zila Parishad and therefore their services could be terminated according to the contract of service at any time as they were work charge labour and they cannot claim any right to continue in the service of Zila Parishad if their services are no longer needed. This submission is correct but the workmen in the statement of claim have not claimed that they should be treated as permanent servant of Zila Parishad. Their case is that they all were workmen as defined in clause (s) of section 2 of the Industrial Disputes Act and they had been in the continuous service of the respondent from the last many years and their retrenchment from service is not in accordance with the law. The question as to whether the claimants have been validly retrenched from service would be decided while discussing the next issue No. 10. Under these issues it would suffice to hold that the mere fact that the claimants were employed on job contract and they were only work-charged labour has got no relevancy for the purpose of deciding whether their retrenchment from service is in accordance with the law or not. I decide these issues accordingly.

Issue No. 10.—The submission of the learned representative of the workmen is that each of the claimants have been in continuous service of the Zila Parishad are more than 12 calendar months preceding the date from which they were retrenched from service and therefore under section 25F of the Industrial Disputes Act they could be retrenched from service only if they had been given one month's notice in writing indicating the reasons for retrenchment and they had been paid at the time of retrenchment, compensation, equivalent to 15 days average pay for every completed year of continue service or any part thereof in excess of six months and it was also on incumbent on Zila Parishad to give a notice of this retrenchment in the prescribed manner as provided by clause C of section 25F of the Industrial Disputes Act. The management only served in the notice, dated 11th October, 1966 on the workmen intimating to them that their service were no longer required with effect from 6th November, 1966 and a notice no reason for the retrenchment has been given and only resolution No. 11, dated 7th October, 1966 has been referred to. The Zila Parishad has not denied that the service of the claimants under Zila Parishad was not continuous and therefore the provisions of section 25 F of the Industrial Disputes Act do not apply to their case. Admittedly the notice as prescribed by law was not given and service compensation was also not offered to the workmen at the time of their retrenchment. Section 25 F of the Industrial Disputes Act provides that giving of one month's notice to the workmen sought to be retrenched, payment of compensation equivalent to 15 days average for every completed year of continue service and a notice as prescribed to the appropriate Government a re conditions precedents for the retrenchment of the workmen. Since none of these conditions have been fulfilled in the present case therefore the retrenchment of the workmen can not be said to be legal.

As regards the relief which can appropriately be given to the claiment, I am of the opinion that it would not be proper to order their reinstatement because Shri Suraj Mal, M.W. 4, Secretary, Zila Parishad has affirmed on oath that there were a number of roads under the control of the District Board namely, Gurgaon to Farukhnagar, Gurgaon to Pataudi, Gurgaon to Manesar, Pal to Kot, Palwal to Alawalpur, Hodel to Unahana and Hodel to Hassenpur. According to the evidence of the witness the total mileage of these roads was about 100 miles and they had an Overseer in each Tehsil. After the formation of the Zila Parishad or a little earlier these roads were transferred to P.W.D. and the service of the Overseers were transferred to Panchayat Samitis and Zila Parishad was left with no supervisory staff at the tehsil level and since no work was left to be done by the claimants therefore their services were terminated with effect from 6th November, 1966 and this has resulted in a saving of Rs. 30,000 per year. In cross-examination the witnesses has stated that the Zila Parishad had only Palwal-Hathin road on 6th November, 1966 when the services of the claimant were terminated and even this road was to be transferred to the P.W.D. in 1962 but on account of some technical hitch this road was not taken over by the P.W.D. till November, 1966 but Zila Parishad did not spend any money even on this road. Hence it is clear that no work can be provided to the claimant if they are reinstated nor can their work be properly supervised but that is no reason for depriving the claimants of their just due under section 25 F of the Industrial Disputes Act, 1947. However no *malafides* against the Zila Parishad are alleged and the services of the claimants were retrenched bona fide because no work could be provided to them and they have actually not performing duties. I think the interest of justice would be met if the claiment are given 50 per cent of their wages till they are retrenched from service in accordance with provision of section 25 F of the Industrial Disputes Act of law.

The 30th December, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 41, dated the Faridabad, 6th January, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

The 30th December, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 241-ASOIII-Lab-69/984.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Frick India, Ltd., Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 20 of 1968

between

SHRI A.D. MALHOTRA, WORKMAN AND THE MANAGEMENT OF M/S FRICK INDIA LTD., FARIDABAD

Present—

Shri Darshan Singh, for the workman

Shri S. L. Gupta, for the management.

AWARD

Shri A. D. Malhotra was in the service of M/s Frick India Ltd., Faridabad, as an Assistant in the Accounts Department. His services were terminated and this gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. 3817—21, dated 13th February, 1968 :—

Whether the termination of services of Shri A. D. Malhotra is justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties for 15th April, 1968. Nobody appeared on behalf of the workman. Shri S. L. Gupta appeared on behalf of the management. Fresh notice was ordered to be issued to the claimant again under registered cover but it was received back with the endorsement that the addressee was not available at the address given and that he is reported to have left the house. There was thus no other option but to proceed with the case *ex parte* and the following issues which arose from the written statement filed on behalf of the management were framed :—

1. Whether the reference is invalid.

2. Whether the termination of the services of Shri A. D. Malhotra was justified and in order ? If not, to what relief is he entitled ?

After the evidence of the management was closed Shri Darshan Singh made an application on behalf of the workman praying that he could not attend the Court on account of unavoidable circumstances and therefore the *ex parte* evidence produced by the management be set aside and the workman be allowed to represent his case. *Vide* the order of this Court, dated 30th September, 1968, it was held that there was no sufficient ground for setting aside the *ex parte* proceedings against the claimant but he could take part in the proceedings at the stage he appeared in Court. Shri A. D. Malhotra, claimant, then appeared as his own witness in support of his case but did not produce any other evidence.

I have heard the learned representatives of the parties and have gone through the records. My indings are as under :—

Issue No. 1.—It is submitted that there is no collective dispute between the workmen and the management, and at least it could be said to be a dispute between the claimant Shri Malhotra and the management and not between the workmen collectively and the management. The submission of the learned representative of the management is that since the order of reference is not correctly worded, it should be rejected out right. In my opinion there is no force in the submission of the learned representative of the management. Under section 2A of the Industrial Disputes Act a workman if aggrieved by reason of the termination of his services can raise a dispute even if no other workmen or any union of workmen is a party to the dispute and this dispute is deemed to be an industrial dispute as defined in clause (k) of section 2 of the Act which means a dispute between employers and workmen. It cannot therefore be said that the reference is invalid nor can it be said that an individual dispute has been converted into a collective dispute. I find this issue in favour of the workman.

Issue No. 2.—It is submitted that the workman was appointed as an Account Assistant,—*vide* letter of appointment, Ex. M. 1, on probation for a period of three months which could be extended for a further period of three months at the discretion of the management. The claimant was appointed on 24th May, 1967, and his services were terminated on 24th October, 1967. It is submitted that the termination of services of the claimant was within the extended period of probation and was thus strictly in accordance with the terms of the letter of appointment and it cannot therefore be said that the termination of the services was not justified and in order. It is submitted that the claimant was not confirmed and therefore, he continued to be on probation. In support of this contention reliance is placed upon on authority of a Supreme Court given in the Express News Paper case reported in 1964-I-LLJ, page 9. In this case it has been held that there was no doubt about the proposition in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It was submitted that since there was no order of confirmation in the present case, the period of probation was automatically deemed to have been extended.

I have carefully considered the submissions of the learnep representative of the management and in my opinion the authority on which the learned representative of the management has relied goes against the management. In the authority relied upon it has been held that the services of a probationer cannot be terminated before the expiry of the period of probation, except on ground of mis conduct or other sufficient reasons. As already observed the claimant was appointed on 24th May, 1967 and his period of probation expired on 23rd August, 1967, The management have not produced any order passed by the management extending his period of probation. Even if it be held that the period of probation was automatically extended because no letter confirming the claimant was issued, it would mean that the services of the claimant were automatically extended by anothers three month but his services were terminated before the expiry of the extended period of probation.

The learned representative of the management has submitted that in the authority cited as 1964-1-LLJ, page 9, the workman was appointed on probation for a period of six months and there was no provision that during the period of probation the management was authorised to terminate the services of the workman at any time. It is submitted that in the present case it is specifically provided in the letter of appointment, Ex. M.I, that during the period of probation the management could terminate the services of the claimant by giving him 24 hours' notice and after confirmation by giving him one months notice. There is also no force in this submission of the learned representative of the management because it does not appear that even the conditions laid down in the letter of appointment, Ex. M. 1, have been complied with according to the letter, Ex. M. 2, dated 24th October, 1967. the services of the claimant stood terminated with immediate effect. The learned representative of the workman has pointed out that the voucher, Ex. M. 3, by which the account of the claimant was settled shows he was paid Rs 558.87 in full and final settlement of his claim after giving him notice pay of Rs 275/- as well. This can also mean that the claimant must be deemed to have been confirmed because according to the terms of the letter of appointment, Ex. M. 1, the claimant was entitled to one months notice only after he had satisfactorily completed his period of probation and was confirmed. Hence my opinion the termination of the services of the claimant was neither in accordance with the terms of letter of appointment, nor in accordance with law. If the claimant was still a probationer then as held by their Lordship of the Suprem Court in the authority cited as 1964-I-LLJ-9 his services could not be terminated during the period of his probation, unless he was held guilty of as mis-conduct or there was other sufficient reason. If the claiment was confirmed then it was all the more necessary for the management to have given him a charge-sheet and an opportunity to defend himself before terminating his services. In my opinion, therefore, the termination of the services of the claimant was not justified and in order.

As regards the relief I am of the opinion that it is not necessary to order the re-instatement of the claimant under the circumstances of the present case. His services have been terminated after he had worked just for 5 months. In the notice of demands no *mala fides* have been alleged against the management. It is only alleged that the services of the claimant have been terminated illegally. Under the circumstances of the case I think six months wages as compensation for loss of his services would meet the ends of justice.

Dated the 31st December, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 36, dated the 6th January, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 31st December, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 236-ASOIII-Lab-69/987.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Motoren Industries, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 89 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S MOTOREN INDUSTRIES, FARIDABAD

Present:—

Shri Darshan Singh, for the workmen.

Shri B. C. Sharma, for the management.

AWARD

M/s Motoren Industries have their factory in the Industrial Area, Faridabad, and they manufacture Laminated Leaf Springs for automobiles. A notice of demand was given on behalf of the Motoren Industries Workers

Union that the workers who work on furnaces may be supplied with milk twice daily because the work which they do is very hazardous onerous and tough as they have to work at a place where the temperature is very high and they work in the midst of smoke which some times is quite suffocating. It was alleged that the atmosphere in which these workmen are required to work is very harmful and tells upon their health and therefore, they require nourishing diet. The management did not accept the demand of the workmen and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with the proviso to that sub-section of the Industrial Disputes Act. 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. 314-SF-III-Lab-67/ , dated 2nd August, 1967.

Whether the workers working on furnaces should be supplied milk free of cost ? If so, with what details and from which date ?

On receipt of the reference usual notices were issued to the parties in response to which the workmen filed their statement of claim and the management filed their written statement. The management raised a preliminary objection questioning the jurisdiction of this Court. It was also pleaded that there was an agreement, dated 24th March, 1964 between the parties in which it was agreed "that the workmen have no further demands for the present and they will not raise any other demand involving financial liabilities for a period of three years excepting that of bonus for the subsequent year". The case of the management is that this agreement still subsists between the parties and the workmen cannot raise any demand which involves financial implications. It was further pleaded that the dispute as referred to this Court is neither a matter of third schedule nor of second schedule of the Industrial Disputes Act and therefore this Court cannot decide this dispute.

On merits the plea is that the respondent factory is a small scale establishment as it is employing about 70 workers in all and that due to general economic recession and crises the finances of the factory have become very weak, so much so that it is not able to meet the expenses of the wages and raw material. It is alleged that there is no work in the factory for the last few months, the workmen remain idle and the factory is working at a loss and as there are no prospects in the near future to recover from the crises so the management is not in a position to bear any extra burden. It is alleged that the management have implemented the interim relief as per recommendations made the Wage Board for the Engineering Industry and that the Board is still looking into the matter and is holding its meeting for the Engineering Industry and its report is due to be submitted to the Government and the final recommendation of the Board would also be implemented in due course of time which will also increase the burden of the management in one form or the other. As regards the conditions in which the claimant have to serve, it is pleaded that all that the furnancemen have to do is to place the spring leaves in the furnances for heat treatment for a certain period and after that these pieces are taken out for oil hardening and there is no suffocation because the furnances are in the same shed where all other processes of leaf spring manufacturing are carried on and the atmosphere is good and it is the same for all workers in the factory. It is alleged that the workmen working of the furnances are getting good wages which are comparatively higher than those given in the other establishments and are much higher than the minimum wages prescribed for the workmen working in the General Engineering Industry.

As regards the demand for the supply of one kilo gram of milk to each of the claimant it is pleaded that this demand would cost the management Rs 10,000 per year because the rate of milk in the town is about Rs 2 per kilogram. It is therefore pleaded that the demand of the workmen is not justified and is liable to be rejected. The pleadings of the parties gave rise to the following issues :—

(1) Whether the workmen are not entitled to make any demand involving financial liability by reason of the agreements, dated 24th March, 1964 and 16th December, 1965, and therefore, this reference is not competent ?

(2) Whether this Court has no jurisdiction to adjudicate upon the reference ?

(3) Whether the respondent factory is a small-scale establishment and due to general economic recession and crises the finances of the factory have become very weak and it is unable to bear any extra burden ?

(4) Whether the workers employed on furnaces are getting comparatively higher wages and for this reason they are not entitled to any extra facility in the form of free milk, etc. ?

(5) Whether the job of furnaceman is a semi-skilled nature and under the Minimum Wages Act, he is entitled to get a maximum wages of Rs 95 per mensem ?

(6) Whether the management have implemented the interim relief as per recommendations made by the Wage Board for the Engineering Industries ? If so, what is its effect ?

(7) Whether the workers working on furnaces have not to undergo any extra hardship as all the furnaces are in the same shed where all the other processes of leaf spring manufacturing are carried on and for this reason the atmosphere is good and it is one and the same for all the workers working in the factory ?

(8) If the above issues are found in favour of the claimants whether they should be supplied milk free of costs ? If so, with what details and from which date ?

After hearing the representative of the parties, the first two preliminary issues were found in favour of the workmen,—*vide* order of the this Court which is at Annexure "A".

A date was given to the parties to produce their evidence on merits but on the date fixed the management filed an other application for permission to amend the written statement and take up certain additional pleas. The amended written statement was not filed but the objections which the management have taken in the application are that by shifting the headquarters of this Court from Rohtak to Faridabad the Court at Rohtak is deemed to have been abolished and a new Court is deemed to have been constituted at Faridabad and since the present

dispute was referred for adjudication to the Labour Court at Rohtak, the reference has automatically lapsed and it cannot be adjudicated upon unless a fresh reference is made by the Government of Haryana. It is also pleaded that the present Presiding Officer was originally appointted to act as Presiding Officer of the Labour Court at Rohtak against a vacanc but the appointment was never notified by the Government but all the same he continued to act as such. It is urged that there is no notification that the Presiding Officer of the Labour Court at Rohtak has been transferred to preside over the Labour Court at Faridabad nor is he re-appointed but he continues to act as such even at Faridabad and so all the proceedings are without jurisdiction.

Some time was taken in tracing the notifications with regard to the origional constitution of the Court at Rohtak and the one which was issued when the Headquarter of the Court was shifted from Rohtak to Faridabad and the notification with regard to the appointment of the Presiding Officer. Before I deal with the case on merits it is desirable that the additional objections taken in the application for permission to amend the written statement be decided first.

The submission of the learned representative of the management is that,—*vide* Notification No. 11495/12474-C-Lab-7 11345, dated 7th February, 1958, the Governor of Punjab constituted a Labour Court with Headquarters at Rohtak and appointed Shri Sher Singh Bakshi, Retired District and Sessions Judge as its Presiding Officer. By Notification No. 5414-3Lab-68/15254. dated 20th June, 1968, the Governor of Haryana amended this notification and for the word "Rohtak" the word "Faridabad" has been substituted. According to the submission of the learned representative of the management, a separate notification should have been issued and the original notification could not have been amended in the manner in which it has been done. In my opinion there is no substance in this objection because the notification No. 11495/12474-C-Lab-57/11345, dated 7th February 1958 is, in fact a consolidated notification constituting a Labour Court at Rohtak and appointing its Presiding Officer. The constitution of the Court and the appointment of its Presiding Officer are two distinct acts and could have been done by separate notifications and the mere fact that only one notification was issued does not invalidate the amendment of the notification with regard to the constitution of the Court by substituting the word "Faridabad" for the word "Rohtak" and in this manner shifting the headquarters of the Court from "Rohtak" to "Faridabad".

As regards the objection that the appointment of the Presiding Officer was not notified, there is notification No. 7103-3Lab-67/25650, dated 24th August, 1967, by which the appointment of the Presiding Officer has been duly notified. The submission of the learned representative of the management that the appointment of the Presiding Officer should also be made by notification in the official Gazette in the same manner in which the Labour Court is constituted has no force. Rule 5 of the rules framed under the Industrial Disputes (Punjab) Rules 1955 only requires that appointment of the Court and the name of the person constituting the Court must be notified and this has been done by Notification No. 7103-3Lab-67/25650. dated 24th August, 1967 after the present Presiding Officer on appointment assumed charg of the Office of the Presiding Officer. Labour Court at Rohtak. In my opinion therefore there is no substance in any of the additional objections raised on behalf of the management that the constitution of the Labour Court at Faridabad is not correct or that the appointment of the Presiding Officer was not properly notified. The first two preliminary issues have already been decided and I now come to the merits of the case.

Issue No. 3.—Except the allegation in the written statement that the respondent factory is a small scale establishment there is no other evidence to prove this fact. As a matter of fact no responsible person has appeared. on behalf of the management to tell the Court what exactly is the true financial position of the respondent concern M.W. 1, is Shri F.F. Danial Ex-Secretary of the respondent concern. His statement could not be completely. recorded because he had not brought the original records with him. He had prepared an extract Ex. M.1 from the sales register but it could not be proved by him because he had not brought the original sales register with him. The representative of the management the refeore made a prayer that the further evidence of this witness may not be continued. He stated that the original records had not been brought on account of the death of the sister-in-law of one of the partners. As prayed the case was adjourned to enable the management to produce the original records and the statement of Shri Danial remained incomplete. Since the examination-in-chief of the witness had not been completed he was not cross-examined on behalf of the workmen. Before the next date Shri Danial left the service of the management and he was not produced in evidence and instead one Shri V. Rajoo an employee of the sales department of the respondent concern was produced as M.W. 2 In these circumstances it is not possible to consider the evidence of Shri Danial at all as there was no opportunity to the workmen to cross-examine him.

As regards Shri V. Rajoo his exact designation in the respondent concern is not known. He has only styled himself as an employee in the sales department but not known what exactly is his status and we can not say whether he holds any responsible position. He has stated that Ex. M.1 correctly shows the position of the sales. He then goes on to prove the price lists Ex. M.2 and Ex. M. 3 and says that the prices were changed because of the slump in the market and the Court is called upon to hold that there is a slump in the market simply because the prices of some items have been reduced. According to the Ex. M. 1 the profit in the year 1964-65 was Rs 1,13,036.93 paise while in 1965-66 the profit is said to be only Rs 11,000.87 paise. The statement Ex. M.1 however does not give the necessary details as to why the profits have gone down. Ex. M. 4 only shows the costs of semi-finished steel flats, in November, 1965 while Ex. M. 5 and Ex M.6 shows the price of spring steel flats. From these few papers it is not possible to form any correct idea of the true financial position of the respondent concern so as to come to any finding as to whether the respondent concern is in a position to bear any extra financial burden as alleged by the management.

The documents purporting to be true copies of the profit and loss account for the year ending 30th September, 1966, manufacturing and trading accounts for the year ending 30th September, 1966 and balance sheet have been filed. They bear the stamp of the respondent concern and purport to bear the signatures of the partner but neither the person who prepared these statements nor any partner of the respondent had appeared in the witness box to prove these documents and it is therefore not possible to consider them or place any reliance on them.

It is pleaded on behalf of the management that the financial position of the respondent concern could not be very bright because Shri H.L. Mehta M.W. 3 who is an Accountant in the respondent concern states that Ex. M. 9 to Ex. M. 11 are the demands of the payment of money which the respondent concern has received and in addition there are other demands as well and the financial position of the respondent concern is tight. The witness further stated that one or two employees have not been paid their salaries in time. From the statement of Sh

Mehta also it is not possible to come to any definite finding regarding the true financial position of the respondent concern. Merely because the payment of some bills is delayed does not necessarily imply that the management is not in a position to make the payment. There can be number of reasons for delayed payment of any particular items. The same is the possition with regard to the alleged delay in the payment of salaries of some employees. No evidence has been led to show as to what exactly was the cash balance in the bank account or with the cashier and other assets and liabilities. If some responsible person had appeared in the witness box to give the Court a correst picture of the finances of the respondent concern at the time when the notice of demands was received, then it would have been possible to come to a definite finding regarding the ability of the management to meet the demands of their workmen working on the furnaces for milk. The management have also not considered it proper to lead any other evidence and therefore it is not possible to hold that the financial position of the respondent concern is really so bad as is sought to be made out.

So far as the workmen are concerned they maintain that the financial position of the respondent concern is very good. Shri Puran Chand W.W. 1 is the section incharge and is getting Rs 241.68 per month. He says that two years back bonus at the rate of 20 per cent was given to the workman on the basis of the settlement and they get annual increment at the rate of 10 per cent of the salary. He says that last year also the management allowed bonus to the workmen of their own free will at the rate of 20 per cent and that the management were able to dispose off all the goods manufactured in the factory and that they are also getting good orders. He says that the goods are exported by the respondent concern to Iran and Afganstan. According to the witness the respondent concern was started in the year, 1958 when the partners had practically no financial position not even a shed in the factory but now the partners are said to have built bangalows, own cars and have set up two other factories. According to the witnesses the respondent concern unduly raised their rates and so it became difficult for them to sell their goods in competation with the other concerns and for this reasons the management were compelled to reduce their rates but still they are higher as compared to the rates of the other rates. According to the witness the management have again raised the rates from the last two or three months and the respondent concern supply atleast 40 per cent of their goods without entering them in their books and they get cash payment for the same. In cross-examination the witness admitted that for the year 1966-67 bonus was given to them only at the rate of 12 per cent but he says that the management did not show them the balance sheet and threatened to close down the factory in case the workmen made any higher demand and the refore he was not in a position to say whether the bonus was reduced to 12 per cent because the profits were less. The evidence of the workmen is naturally also not very helpful for the purpose of coming to the conclusion as to wat exactly is the correct financial position of the respondent concern. The mangement alone could produce satisfactory evidence to show what their correct financial position is and whether they are in a position to meet any extra burden. Since no proper evidence has been led by the management and the workmen also did not give any applications for summoning the necessary records for the purpose of coming to the conclusion as to what is the correct financial position of the respondent concern, I hold that it is not possible to give any definite finding on this issue. The management have thus not proved that their financial position is so week that they are not in a position to meet any extra burden.

Issue No. 4.—The management in the written statement have given the date of appointment and the wages which are being paid to ten of their workmen working on the furnances. Out of them first four are the firemen and the remaining six are helpers. The lowest paid fireman is Shri Mangru Ram who was appointed on 6th December, 1960 and is at present getting Rs 133.10 paise per month. The wages which are being paid to those working in other establishment have not been mentioned and therefore it is not pssible to hold that the workers employed on furnances are getting comparatively higher wages. I therefore find this issue not proved.

Issue No. 5.—The management have also mentioned in the written statement the minimum wages which have to be paid to unskilled, semi-skilled and skilled workmen and it appears that probably the management want to take up the stand that the workmen working on furnances are getting much higher wages than those fixed under the minimum wages act and for this reasons the workers are not entitled to any further facilities in the form of free supply of milk. According to them the job of a furnanceman is of a semi-skilled nature and under the minimum wages act he is entitled to Rs 95 per mensem only while in fact he is getting much higher wages. The mere fact that the wages of the workmen are higher there that fixed under the Minimum Wages Act is by it self no ground for denying the relief claimed by the workmen working on the furnances. Their claim is that their duty is of more onerous and tough nature than that of their co-workmen and therefore in equity they should have the facility of free supply of one kilogram of milk. The question as to whether under the circumstances of the case the workmen should get this facility or not would be considered while discussing issue No. 7 under this issue it would suffice to hold that the pages fixed under the Minimum Wages Act has no bearing on the demand of the workmen that in view of very hazardous onerous and tough job which they are called upon to do they should, be supplied with one Kilograme of free milk.

Issue No. 6.—Shri V. Rajoo, M.W. 2 in his evidence has simply proved the circuler which was issued by the Faridabad Industries Association with regard to the implementation of the interim recommendations of the Central Wage Board which is Exhibit M.7 but he does not say whether the recommendatons have been actually implemented by the respondent concern and if so what additional financial burden has been imposed by reason of the implementation of the recommendations of the Central Wage Board. I therefore find this issue not proved.

*Issue No.*7. The contention of the management is that the workers working on the furnances have not to under go any extra hardship because the furnances are in the same shed where all the other processes of leaf spring manufacturing are carried on. On behalf of the workman it is pleaded that the temprature near the furnnaces is much higher than it is at place where the other processes of leaf spring manufacturing are carried on. It is also pleaded that there is lot of smoke near the furnances and for both these reasons the workers working on frunances have to undergo extra hardship and in order to maintain their health and energy, it is essential that they should have extra milk and in view of the rising cost of living they are not in a position to buy milk out of the wages which they are getting. I isnpected the spot in order to see the conditions in which the persons have to work on the furnances and my inspection note is on the file. I found that the workmen who had to work near the furnances have to work in a temprature which is higher than what it is at other places and I also found that the two furnances which were working at that time were giving out soke which slowly spread in the room and for this reason the atmosphere near the furnances became a little suffocating and the submissionns of the learned representative for the workmen that the persons working near the furnances have to work in a temperature which

is comparatively higher and the atmosphere there is also suffocating is correct put the question for determination is whether for this reason alone therse workmen are entitled to the facility of free supply of milk. In order to arrive at a satisfactory conclusion on this question we are to see whether:— (1) the respondent concern would be able to bear the extra burden. (2) the wages of the workment are such that from their wages they are unable to supplemeent their diet and take milk. (3) whether the facility of the free supply of milk is being given to the workman working in similar conditions in other concerns.

So far the point No. 1 is concerned we have already seen that the management have not led any satisfactory evidence to prove what exactly their financial condition is and by resaons of the tight financial position they would be unable to bear any extra burden. As regards the second point I am of the opinion that the wages which the workmen are already getting appea r to be quite fair. It is true that the prices are constantly rising but it is in the evidence of the workmen that they are getting an annual increment of 10 per cent annuam which to some extent relievs the workment of the extra burden imposed upon them by reason of the rising prices. As regards the 3rd point Shri Codin W.W. 2 an employee of M/S. Autopin has stated that the works on furnances and get half kilo of milk every day. In cross ecamination the witness admits that his salary is only Rs. 84 P.M. amd his annual increment is Rs. 4 P.M. According to the details given in the written statement we find that Sarvshri Dilphool and Ram Charan appointed in 1964 are getting the lowest salary which is Rs. 96-80 P.M. The other fire helper are getting much higher. Bhika Ram Fire helper is getting Rs. 105-15 Ram Khilwan is getting Rs. 110 P.M. Guru Parshad is getting Rs. 124-44 while Sukh Lal is getting Rs. 139-09. The salary of Firemen is higher. Shanker Dass Fireman is getting Rs. 248-90 P.M. Gisa Ram is getting Rs. 172-42 paise per month, Mangru Ram is getting Rs. 133-10. Ram Asray is getting Rs. 121 P.M. Under these circumstances I am of the opinion that it would not be in the interest of justice to put any extra bruden on the management for the and give the facility of the supply of free milk to the persons work ing on the furnances. No order as to cost.

Dated the 30th December, 1968

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No.42 dated 6th January, ,1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh, as required undder section 15 of the Industrial Disputes Act, 1947.

Dated 30th December 1968

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

CORRIGENDUM

The 13th January, 1969

No. 349-2Lab-69/1697.—In exercise of the powers conferred bv clause (a) of sub-section (1) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Haryana is pleased to to make the following amendment in the Haryana Government Labour Department Notification No. 10545-2Lab--68/30895, dated the 17th December, 1968, namely:—

(i) Against serial No. 3 under caption 'Government nominee' for the words 'Shri H. L. Mehta, Deputy Director of Industries, Haryana, Chandigarh,' the words 'Director of Industries Haryana, Chandigarh or his Nominee' shall be substituted; and

(ii) against Sr. No. 3 under caption 'Employers Representative for' Shri Shankar Dass Kapur the names of 'Shri N. P. Sinha, acting Factory Manager, the Atlas Cycle Industries, Ltd., for Bagh, New Delhi' shall be substituted.

The 24th January, 1969

No. 482-1 Lab-69/2169—Dr. P. N. Dugal, Assistant Director, Health Services (Social Insurance), Haryana, has been absorbed on permanent basis in the service of Haryana State in the scale of 1350-50-1600 *plus* a Non-practising allowance of Rs. 100/- P. M. as a personal measure to him with effect from 20th September, 1968.

The 10th January, 1969

No. 151-ASOIII-Lab-69/950.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of Modern Straw Board Mills (P) Ltd., Jatheri tehsil, Sonepat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 35 of 1968

between

SHRI KARAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S MODERN STRAW BOARD MILLS (P) LTD., JATHERI, TEHSIL SONEPAT

Present—

Shri M. S. Rathi, for the Workman.

Shri N. L. Kanodhia, for the management.

AWARD

Shri Karan Singh was in the service of M/s Modern Straw Board Mills (P) Ltd., Jatheri, Tehsil. Sonepat His services were terminated and this gave rise to an industrial dispute. The President of India, in exercise, of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/RK/90A-68/8040, dated 26th March, 1968.

Whether the termination of the services of Shri Karan Singh was justified and in order, If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed his statement of claim and the management filed their written statement. The pleadings of parties gave rise to the following issues :—

1. Whether Section 2A of the Industrial Disputes Act has been declared *ultra vires* of the constitution?

2. Whether the claimant was employed only for the installation and creating of the factory and by reason of the completion of the work his services were no longer necessary?

3. Whether the claimant has been retrenched from service in accordance with law?

4. Whether the claimant has settled his account in full and final settlement and this reference is not competent?

5. Whether the reference is not valid because the claimant was not a workman on the date of reference?

6. Whether the management wrongfully refused to give duty to the claimant from 4th December, 1967, onwards?

7. If the above issues are found in favour of the claimant whether the termination of his services was not justified and in order ? and if so, to what relief he is entitled?

The parties have produced their evidence. I have heard their learned representative and gone through the records. My findings are as under :—

Issue No. 1. The Labour Court is a Court of special jurisdiction created under the Industrial Disputes Act and it has obviously no jurisdiction to consider the vires of any statute. No authority has been cited in support of the contention that section 2A of the Industrial Disputes Act has already been declared *ultravires*. I accordingly find this issue in favour of the workman.

Issues No. 2 and 3. Shri N.L. Kanodhia, M.W.1. is the Chairman of the respondent concern. He has appeared as a witness in support of the management and has stated that the claimant was first appointed as a Carpenter in June, 1966 and the work of Fitter was given to him later on and his services were terminated with effect from 1st January, 1968 on the ground that management had no work for him. Shri Kanodhia states that no substitute was appinted in place of the claimant

In rebuttal the workman has appeared as his own witness and stated that the reason for the termination of his services was that he met with an accident between the night of 30th June, 1967 and 1st July, 1967 and he requested that compensation may be given to him for the injuries received by him but it was refused. Shri J. P. Diwan, W. W. 2, Ex. Manager of the respondent concern has appeared as a witness on behalf of the workman. He says that when the claimant asked for compensation it was refused and it culminated in a quarrel and the claimant abused Shri Kanodhia. So his services were terminated. None of them say that any substitute for the claimant was appointed. Hence the evidence of Shri Kanodhia that the services of the claimant were no longer required remained unchallenged and it must therefore be held that the claimant had been retrenched from service. It is submitted on behalf of the claimant that if the management wanted to retrench a workman then the workman who was appointed latter on and was junior to the claimant should have been retrenched. Shri J. P. Diwan, W. W. 2 states that one Shri Ram Dev was appointed as a junior Foreman in the respondent concerned after the appointment of the claimant and was thus junior to him because Shri Ram Dev also did the work of a Fitter and the claimant was also working as a Fitter. Shri Kanodhia however states that the claimant was first appointed as a Carpenter and later on he was given the work of a Fitter while Shri Ram Dev was appointed to work as a Junior Foreman. Shri Diwan admits that Shri Ram Dev looked after the production side as well although he adds that the pay of the claimant as also of Ram Dev was the same. He further states that prior to Ram Dev one Sham Lal looked after the machine and the claimant also some times looked after the machine. The claimant in his evidence has not denied that initially he was not appointed to work as a Carpenter. Shri Ram Dev was designated as a Junior Foreman from the very beginning. It is, therefore, obvious that the designations of the claimant and that of Ram Dev was different and it can be said that it was incumbent upon the management to have retained the claimant and to terminate the services of Shri Ram Dev in case a workman is working as a Fitter had to be retrenched. But even if for the sake of the arguments it is conceded that both the claimant and Shri Ram Dev were doing the same type of work and Shri Ram Dev being the junior should have been retrenched first still it would not help the claimant in any manner because Shri Kandohia has stated that the services of Shri Ram Dev were also terminated by the end of February, 1968 thus in case the services of the claimant had not been terminated in January, 1968, he would have been made to go in the month of February, 1968, i.e., to say without being able to complete one year of continuous service as defind in section 25(b) of the Industrial Disputes Act and he would not have been entitled to any retrenchment benefit as provided in section 25F of the said Act. At the most

the claimant could have continued in service for one month more, but under no circumstances he could claim retrenchment compensation since the version of the management that the claimant was first appointed as a Carpenter and later on given the work of Fitter while Shri Ram Dev was appointed as a Junior Foreman for the very beginning has been believed. I am of the opinion that the services of the claimant have been retrenched in accordance with law as his services were no longer necessary. I find both these issues in favour of the management.

Issue No. 4. The claimant has been paid Rs. 150,—*vide* voucher, dated 25th March, 1958 Ex.M.8 in full and final settlement. The use of the word full and final settlement can not deprive the workman of his right to claim reinstatement or retrenchment benefit in case he was entitled for the same but in view of my findings that the claimant has been validly retrenched from service without being able to complete one year of continuous service in the previous 12 calendar months, it must be held that the claimant received Rs. 150 account of his pay which was then due to him. I find this issue accordingly.

Issue No. 5. The reference can not said to be invalid because the claimant was not actually working for the respondent on the date of reference. The termination of his services has given rise to the present dispute and it must therefore be held that the claimant was a workman as defined in clause (s) of Section 2 of the Industrial Disputes Act.

Issue No. 6. The management in their letter, dated 22nd December, 1967 marked Ex. M. 4 have informed the workman that he may work in the factory upto 3rd January, 1968. In the letter, dated 15th December, 1967 marked W. 3 the management gave a notice to the claimant that his services were no longer required with effect from 1st January, 1968. It must therefore be held that the claimant was in the service of the management for the month of December, 1967 and he can claim his wages if any due to him for the period he was in the service of the management. The claimant in his evidence has stated that Rupees 25 are still due to him on account of his salary. The question as to whether any salary is still due to the claimant need not be decided in these proceedings because the only question referred for adjudication to this Court is whether the termination of the services of the claimant were justified and in order and if not to what relief he is entitled? If any salary is still due to the claimant he can take appropriate proceedings for the recovery of the same. I decide this issue accordingly.

Issue No. 7. In view of my findings above it must be held that the termination of the services of the claimant was justified and in order and he is not entitled to any relief in these proceedings. No order as to cost.

The 30th December, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 7, dated the 1st January, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 30th December, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

R. I. N. AHOOJA, Secy

PUBLIC WORKS DEPARTMENT

The 24th January, 1969

No. 284 2PW(2)69-/2539.—Whereas it appears to the Governor of Haryana that land is likely to be acquired by the Government, at public expense, for a public purpose, namely, for the construction of 220 K. V. Gird Substation at Pipli (Kurukshetra), district Karnal, under Beas Project, it is hereby notified that the land in the locality described in specification below is likely to be acquired for the above purpose.

This notification is made under the provision of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorise the officers/officisls of the Bhakra Management Board for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality described in the specification below and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this notification file an objection in writing before the Land Acquisition Collector, Haryana State Electricity Board, Chandigarh.

SPECIFICATION

District	Tehsil	Locality	Area	Khasra Nos. and other Description of Area	
			A. K. M.	Rectangle No.	Khasra Nos.
Karnal	Thanesar	Village Drah Kalan	14—3—13	12	17/1, 17/2, 24 and 25
				13	21/2
				16	1, 2, 3/1, 6/2, 7 to 15 and 26
				17	5 and 6
				According to Jamabandi year 1966-67	
Karnal	Thanesar	Village Sunder Pur	16—3—04	6	4, 6, 7, 14, 15/1 15/2, 16/1, 16/2. 16/3, 17, 24, 25/1 to 25/5
				5	11, 12/1, 12/2, 17 to 23
				1	24
				—	30, 31
				According to Jamabandi year 1968-69	
		Total	30—6—17		

The 24th/27th January, 1969

No. 93-2PW II/68/2022- Whereas it appears to the Governor of Haryana that land is likely to be acquired by the Government, at the public expense for a public purpose, namely, constructing of 220 K.V. Grid sub-station at Yumna Nagar (Jagadhri) district Ambala, it is hereby notified that the land in the locality described inspecification below is likely to be acquired for the above purpose.

This notification is made under the provision of Section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorise the officers of the Bhakra Management Board for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality, may within thirty days of the publication of this notification, file an objection in writing before the Land Acqusition Collector, Haryana, State Electricity Board, Shop cum-Flat No. 28, Sector 17-F, Chandigarh-17.

SPECIFICATION

District	Tehsil	Locality	Khasra Nos. of the acres or other description
Ambala	Jagadhri	Village Khera and Bhatauli	Khasra Nos. 357, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217 Area Bighas Biswas 121 2 OR A K M 25 1 17 Approx

			Morabba No.	Kila No.	Area A	K	M
Ambala	Jagadhri	Village Bhatauli	29	13 18 19 22 23			
			30	1, 2, 3	5	7	6

Note (Total land required about 30 acres)

P. N. BHALLA, Secy.

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